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In the Supreme Court of the United States

OCTOBER TERM, 1970.

No. 1675

MORRISON MOTOR FREIGHT, INC.,
Petitioner,

v.

HELEN GRETA FOX,
Administratrix of the Estate of Harry Eugene Fox,
Respondent.

CERTIORARI TO THE SUPREME COURT OF OHIO.

PETITION FOR WRIT OF CERTIORARI BY MORRISON MOTOR FREIGHT, INC.

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May 3, 1971.

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Morrison Motor Freight, Inc. petitions the Court to issue its writ of certiorari to the Supreme Court of Ohio to review the judgment entered by that court in cause No. 70-128 on the docket of that court.

OPINIONS BELOW.

The oral opinion of the Court of Common Pleas of Cuyahoga County, Ohio, is not reported, but appears in the Appendix hereto at page 1. The opinion of the Supreme Court of Ohio in *Fox v. Morrison Motor Freight, Inc.*, 25 Ohio St. 2d 193; 267 N.E.2d 405, is set forth in the Appendix at page 8.

JURISDICTION.

Judgment is dated and was entered March 3, 1971 (Appendix page 19). Rehearing was not sought.

Jurisdiction to review is granted by 28 U.S.C. 1257 (3).

QUESTION PRESENTED.

The question presented is:

Whether in an action for wrongful death arising out of a traffic accident in Illinois an Ohio court may constitutionally award damages in excess of the $30,000 ceiling imposed by the Illinois statute.

STATUTES AND CONSTITUTION.

The Illinois statute in question provides, 70 Illinois Revised Statutes §§ 1 and 2:

"(1) Whenever the death of a person shall be caused by wrongful act, neglect or default, and the act, neglect or default is such as would, if death had not ensued, have entitled the party injured to maintain an action and recover damages in respect thereof, then and in every such case the person or company or corporation which would have been liable if death had not ensued, shall be liable to an action for damages, notwithstanding the death of the person injured, and although the death shall have been caused under such circumstances as amount in law to felony.

(2) Every such action shall be brought by and in the names of the personal representatives of such deceased person, and, except as otherwise hereinafter provided, the amount recovered in every such action shall be for the exclusive benefit of the widow and next of kin of such deceased person and in every such action *the jury may give such damages as they shall deem a fair and just compensation* with reference to the pecuniary injuries resulting from such death, to the wife and next of kin of such deceased person, not exceeding $20,000 where such death occurred prior to July 14, 1955, and not exceeding $25,000 where such death occurred on or after July 14, 1955 and

prior to July 8, 1957, and *not exceeding $30,000* where such death occurs on or after July 8, 1957. (The remainder of 70 Section 2 is not here pertinent).*

The United States Constitution provides, Article IV, Section 1:

> "Full Faith and Credit shall be given in each State *to the public Acts,* Records, and Judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof."

The implementing statute, 28 U.S.C. 1738, provides:

> "The Acts of the legislature of any State, Territory, or Possession of the United States, or copies thereof, shall be authenticated by affixing the seal of such State, Territory or Possession thereto.
>
> The records and judicial proceedings of any court of any such State, Territory or Possession, or copies thereof, shall be proved or admitted in other courts within the United States and its Territories and Possessions by the attestation of the clerk and seal of the court annexed, if a seal exists, together with a certificate of a judge of the court that the said attestation is in proper form.
>
> Such Acts, records and judicial proceedings or copies thereof, so authenticated, *shall have the same full faith and credit in every court within the United States* and its Territories and Possessions *as they have by law* or usage *in the courts of such State,* Territory or Possession from which they are taken."

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* Emphasis supplied throughout.

STATEMENT OF THE CASE.

On September 19, 1964, respondent's decedent was killed in a traffic accident in Illinois. Decedent and his family were Ohio residents. Petitioner is not an Ohio corporation. It is an interstate carrier and has terminals in many states. Petitioner's driver was an Ohio citizen. Decedent was likewise a professional driver, operating an over-the-road rig for an interstate carrier. Respondent's decedent was a total stranger to both defendant and defendant's driver. In the face of the full faith and credit clause, the Supreme Court of Ohio dismembered the Illinois statute. It gave full faith and credit to so much of the statute as created by the cause of action but refused full faith and credit to its limitation.

The Supreme Court of Ohio itself raised the constitutional issue. Mr. Justice Duncan, in delivering the Court's opinion observed, 25 Ohio St. 2d at 200:

> "The relationship of Ohio with this litigation is more than significant enough to counter the contention that our result herein affronts the federal Constitution. See *Richards v. United States* (1962), 369 U.S. 1."

Richards v. United States does not touch the question here presented. Mr. Chief Justice Warren there observed, 369 U.S. at 15:

> "Where more than one State has sufficiently substantial contact with the activity in question, the forum State, by analysis of the interests possessed by the States involved, could constitutionally apply to the decision of the case the law of one or another state having such an interest in the multistate activity. Thus, an Oklahoma state court would be free to apply either its own law, the law of the place where the negligence occurred, or the law of Missouri, the law of the place where the injury occurred, to an action

> brought in its courts and involving this factual situation. Both the Federal District Court sitting in Oklahoma, and the Court of Appeals for the Tenth Circuit, have interpreted the pertinent Oklahoma decisions, which we have held are controlling, to declare that *an action for wrongful death is based on the statute of the place where the injury occurred that caused the death. Therefore, Missouri's statute controls the case at bar.*"

In *Richards* the monetary limitation of the Missouri statute was enforced. The court did *not,* as the Ohio Supreme Court mistakenly thought, leave it open to the court to apply *part only* of the public act of a sister state.

The Constitution does not confide to the caprice of courts the faith and credit to be given to the statutes of a sister state; to the contrary, the Constitution demands that "*Full* Faith and Credit *shall* be given in each State to the *public Acts* of every other State."

If, as this Court has held, Wisconsin cannot constitutionally refuse to enforce the Illinois Wrongful Death Act, *Hughes v. Fetter* (1951), 341 U.S. 609, and Illinois cannot constitutionally refuse to enforce the Utah Wrongful Death Act, *First National Bank v. United Airlines* (1952), 342 U.S. 396, it is an affront to the full faith and credit clause to allow Ohio to reject part of the Illinois statute which it professed to enforce. This is not *full* faith and credit.

As to public acts, Article IV leaves no room for choice. As Mr. Justice Jackson, concurring, put it in *First National Bank v. United Airlines,* 342 U.S. at 400:

> "For the essence of the Full Faith and Credit Clause is that *certain* transactions, wherever in the United States they may be litigated, shall have the same legal consequences as they would have in the place where they occurred."

Had this cause of action been litigated in Illinois and judgment for $30,000 entered, it could not thereafter have been relitigated in Ohio and additional sums awarded. The Constitution requires that the result be the same whether the decision be made by an Illinois Court or, as here, by its Legislature.

Respectfully submitted,

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